

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Azmitia	Team: Squad #15	CCRB Case #: 201710432	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 12/04/2017 5:30 PM	Location of Incident: Inside the 73rd Precinct Stationhouse	Precinct: 73	18 Mo. SOL 6/4/2019	EO SOL 6/4/2019	
Date/Time CV Reported Tue, 12/19/2017 3:42 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 12/19/2017 3:42 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Dana Ladson	10196	941282	073 PCT
2. SGT Robert Wagner	02781	945088	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Freund	31081	954827	073 PCT
2. SGT Michael Mongan	01929	941119	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Robert Wagner	Abuse: Sergeant Robert Wagner authorized a search of § 87(2)(b)	
B.POM Dana Ladson	Abuse: Police Officer Dana Ladson threatened to arrest § 87(2)(b)	
C.POM Dana Ladson	Abuse: Police Officer Dana Ladson refused to provide his name to § 87(2)(b)	
D.POM Dana Ladson	Abuse: Police Officer Dana Ladson issued a retaliatory summons to § 87(2)(b)	

### Case Summary

On December 19, 2017, § 87(2)(b) filed this complaint via the CCRB's online complaint form.

On December 4, 2017, at approximately 5:30 P.M. inside the 73<sup>rd</sup> Precinct stationhouse, Sgt. Robert Wagner of the 73<sup>rd</sup> Precinct authorized PO Ladson to remove a knife from § 87(2)(b) left side pants pocket (**Allegation A, Abuse of Authority:** § 87(2)(g) PO Ladson allegedly stated that he would lock up § 87(2)(b) for having the knife (**Allegation B, Abuse of Authority:** § 87(2)(g) When § 87(2)(b) requested his name, PO Ladson allegedly did not respond and instead requested § 87(2)(b) identification to issue him a criminal summons, stating, "This is what you get for asking" for his information (**Allegations C and D, Abuse of Authority:** § 87(2)(g)

### Findings and Recommendations

#### **Allegation (A) Abuse of Authority: Sergeant Robert Wagner authorized a search of** § 87(2)(b)

It is undisputed that Sgt. Wagner instructed PO Ladson to remove the knife from § 87(2)(b) pocket and issue him a criminal court summons.

In his testimony to the CCRB, § 87(2)(b) stated that he was speaking with PO John Freund when PO Ladson reached into the left side pocket of § 87(2)(b) pants and pulled out his utility knife, which he uses in his work as § 87(2)(b) [BR 03]. PO Ladson never asked § 87(2)(b) if he could enter his pocket and § 87(2)(b) did not give him permission to do so. § 87(2)(b) noted that the knife was clipped onto his pocket and positioned in such a way that only the clip was visible where it stuck out of the pocket. He allowed the investigator to photograph how the knife was positioned on his person, as he had since been issued a replacement knife and had stored it in the same manner as he had on the incident date [BR 09]. § 87(2)(g)

In his testimony to the CCRB, PO Ladson stated that he was assigned to Response Auto A and was in the back of the stationhouse processing an arrest [BR 04]. Sgt. Wagner approached him there and informed him that there was an individual, later identified as § 87(2)(b) in the stationhouse with a knife, which was clipped into his left pants pocket and was in plain view. PO Ladson did not specify whether Sgt. Wagner had explicitly told him to remove the knife but stated that by telling PO Ladson that § 87(2)(b) had a knife, he was giving PO Ladson an order to investigate. PO Ladson complied with the order and removed the knife, vouchered it, and issued a criminal court summons to § 87(2)(b)

Sgt. Michael Mongan of the 73<sup>rd</sup> Precinct, who was the desk sergeant at the time of the incident, testified to the CCRB that he heard Sgt. Wagner instruct PO Ladson to remove § 87(2)(b) knife and issue him a summons [BR 05]. He did not see the knife personally until it had already been removed from § 87(2)(b) pants pocket.

In his testimony to the CCRB, PO Freund, who was the telephone switchboard operator, stated that he was unaware of what prompted PO Ladson to interact with § 87(2)(b) and did not recall seeing Sgt. Wagner at any point during the incident [BR 06]. PO Freund did not hear any sergeant give PO Ladson instructions regarding the knife or the summons.

Sgt. Wagner § 87(2)(g) stated that he entered the 73<sup>rd</sup> Precinct stationhouse after being on patrol and saw § 87(2)(b) talking to PO Freund. He observed in plain view a knife clipped to § 87(2)(b) left pocket. He also saw the outline of the knife through the fabric of the pocket although he did not recall the dimensions or size. Sgt. Wagner stated that he knew it was a gravity knife because of the clip, the top of the knife that was visible, and the shape of the knife in the pocket.

New York State Penal Law Section 265.01 denotes that the mere possession of a gravity knife as a class A misdemeanor [BR 11]. In order to stop an individual, an officer must have specific and articulate facts from which to infer that an individual was carrying an illegal gravity knife. People v Vargas, 89 AD 3d 582 [1st Dept 2011]. [BR 12] Furthermore, case law has indicated that an officer had probable cause to recover a knife that he concluded to be a gravity knife, based on certain aspects of the knife, including the fact that it was carried with a clip on the outside of the pocket, and with the top of the knife protruding from the pocket. People v Brannon, 16 N.Y.3d 596. [BR 13] § 87(2)(g)

**Allegation (B) Abuse of Authority: Police Officer Dana Ladson threatened to arrest § 87(2)(b)**

In his testimony to the CCRB, § 87(2)(b) stated that after PO Ladson removed the knife from his pocket, he said to § 87(2)(b) “You know I could lock you up for this?” [BR 03] PO Ladson also spoke to a sergeant and said, “I’m going to lock him up.” § 87(2)(g)

PO Ladson testified to the CCRB that he never told § 87(2)(b) that he could or would be arrested for having the knife [BR 04]. He stated that the decision of whether to arrest § 87(2)(b) or give him a summons had been made by Sgt. Mongan. PO Ladson also noted that that Sgt. Wagner told § 87(2)(b) he could be arrested for having the knife, but did not express any intent to arrest § 87(2)(b).

In his testimony to the CCRB, PO Freund stated that he did not recall any discussion of arresting § 87(2)(b) nor did he hear any officer threaten to arrest § 87(2)(b) because of the knife [BR 06].

Sgt. Mongan § 87(2)(g) did not recall any discussion between any officers about arresting § 87(2)(b) and did not recall PO Ladson or any other officer say that they would arrest § 87(2)(b). Sgt. Mongan did note that it is possible that § 87(2)(b) could have been arrested, depending on the knife, which he did not examine himself.

Sgt. Wagner’s testimony corroborated that of Sgt. Mongan and PO Freund [BR 07]. Sgt. Wagner stated that no one present for the incident mentioned arresting § 87(2)(b) or threatened to arrest him, although having the knife was an arrestable offense. He did not recall whether § 87(2)(b) was ever informed that he could be arrested for having the knife.

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Dana Ladson refused to provide his name to § 87(2)(b)**

§ 87(2)(b) stated in his testimony to the CCRB that after his knife was taken, he was asked to leave the command desk and go to the stationhouse's waiting area [BR 03]. As he was leaving, he stopped and asked for PO Ladson's name and tax number. PO Ladson did not respond to the request and instead said, "Give me your ID right now." § 87(2)(b) complied, and PO Ladson issued him a criminal court summons for possession of a knife. He also gave § 87(2)(b) a card with his name and shield number. PO Ladson never verbalized his name or tax number. § 87(2)(g)

In his testimony to the CCRB, PO Ladson stated that § 87(2)(b) was on speaker phone with his girlfriend when he issued the summons to § 87(2)(b) [BR 04]. His girlfriend told him to get PO Ladson's name and shield number, but § 87(2)(b) did not ask for it himself. PO Ladson also noted that he had already given § 87(2)(b) that information on his contact card. He did not refuse to provide his name to § 87(2)(b) at any point during the incident.

PO Freund testified to the CCRB that he did not hear § 87(2)(b) ask for PO Ladson's name, nor did he hear PO Ladson refuse to provide his name to § 87(2)(b) [BR 06].

Sgt. Mongar § 87(2)(g) did not see or hear PO Ladson give § 87(2)(b) the summons. He did not hear § 87(2)(b) ask for PO Ladson's name, nor did he hear PO Ladson refuse to provide that information.

Sgt. Wagner's testimony to the CCRB corroborated that of PO Ladson [BR 07]. He did not hear § 87(2)(b) ask for PO Ladson's name, nor did he hear PO Ladson refuse to provide his name to § 87(2)(b).

As per NYPD Patrol Guide Procedure 203-09, an officer must courteously and clearly state their rank, name, shield number and command, to anyone who requests the officer to do so, and allow the person time to note the information unless a contact card is offered [BR 16].

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Dana Ladson issued a retaliatory summons to § 87(2)(b)**

It is undisputed that PO Ladson issued a criminal summons to § 87(2)(b) for possession of a gravity knife.

§ 87(2)(b) stated in his testimony to the CCRB that PO Ladson gave him the summons and said, "This is what you get for asking me for my name" [BR 03]. Later in his testimony, § 87(2)(b) stated that PO Ladson made this comment as he was taking § 87(2)(b) identification. § 87(2)(g)

In his testimony to the CCRB, PO Ladson stated that when he gave § 87(2)(b) the summons, he explained that § 87(2)(b) would have to appear in court at a later date [BR 04]. PO

Ladson did not make any other statements as he issued the summons, and did not tell § 87(2)(b) that he was being issued a summons in retaliation for asking for PO Ladson's information.

PO Freund testified to the CCRB that he was not able to hear what was said when § 87(2)(b) was issued the summons [BR 06]. PO Freund did not hear PO Ladson tell § 87(2)(b) that he was being issued a summons in retaliation for § 87(2)(b) asking for PO Ladson's name.

Sgt. Mongar § 87(2)(g) did not see or hear PO Ladson give § 87(2)(b) the summons. Sgt. Mongan did not hear PO Ladson tell § 87(2)(b) that he was being issued a summons for asking for PO Ladson's name, nor did he hear PO Ladson provide any reason for the summons aside from the knife.

Sgt. Wagner's testimony to the CCRB corroborated that of PO Ladson [BR 07]. Sgt. Wagner instructed PO Ladson to issue the summons. PO Ladson did not indicate that the summons was in response to § 87(2)(b) asking for his name and shield number.

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party [BR 14].
- Sgt. Wagner has been a member of service for 10 years and has been a subject in two CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)
- PO Ladson has been a member of service for 11 years and has been a subject in six CCRB complaints and 15 allegations, one of which was substantiated.
  - Case #201600537 involved a substantiated allegation of refusal to provide name and shield number against PO Ladson. The board recommended instruction, which the NYPD imposed.
  - § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- On April 9, 2018, a request to determine if a Notice of Claim was filed was submitted; confirmation from the Office of the New York City Comptroller will be forwarded upon receipt [BR 08].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 15

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date